



accepted her claim for bilateral calcaneal stress fracture (resolved), with a November 8, 2012 date of injury. It paid wage-loss compensation for the period February 25 through June 19, 2013.<sup>2</sup>

In accepting the claim and awarding compensation, OWCP primarily relied on the May 8, 2013 report of Dr. Fred J. Marino, a podiatrist, who first examined appellant on November 8, 2012. Dr. Marino identified an underlying structural deformity, anterior (pes) cavus type foot with a functional equinus. Appellant had high arched feet where the forefoot was lower than the heel level, which tended to reduce ankle joint dorsiflexion causing stress on the Achilles tendon and plantar fascia. Initial x-rays showed plantar calcaneal spurring and trabecular disruption of the calcaneus consistent with stress fracture and chronic plantar fasciitis. Dr. Marino indicated that his initial impression was chronic plantar fasciitis and heel spur syndrome, which he treated conservatively with mechanical support. The initial treatment proved unsuccessful. Dr. Marino then suspected appellant had calcaneal stress fracture, in addition to the previously diagnosed conditions. By early December 2012, he was fairly certain that he had bilateral calcaneal stress fracture. Dr. Marino treated both feet with a cast boot, followed by orthotics for support and long-term management. When appellant's condition had not improved to the level of Dr. Marino's expectations, they discussed the possibility of a Topaz repair of the plantar fascia. Her condition subsequently improved and during her latest examination, Dr. Marino indicated that she was getting back to normal life. Appellant was progressing well and she could perform all normal daily functions in reasonable comfort without further treatment. Dr. Marino stated that appellant's calcaneal stress fracture had resolved.

While appellant was able to perform normal daily activities without difficulty, Dr. Marino noted that returning to work would be a different story, especially if she could not be accommodated with some sort of lighter duty that allowed her to sit periodically. He stated that work certainly contributed to appellant's problem. Dr. Marino explained that appellant's underlying physical structure predisposed her to this type of injury, but certainly her work environment contributed with prolonged standing on hard flat surfaces and carrying extra loads. He stated that no further medical treatment was necessary for purposes of performing normal daily activities, but a Topaz repair of the plantar fascia might be necessary upon returning to work. Dr. Marino recommended work restrictions that included no more than 2 hours of standing and no more than 2 hours of walking in an 8-hour workday, with 15-minute rest intervals between those periods. He also recommended a 30- to 40-pound weight limit. Dr. Marino explained that these restrictions would be in appellant's best interest for long-term success.

At the time OWCP accepted the claim, it advised appellant that her bilateral calcaneal stress fractures had resolved and the case was administratively closed with no need for further medical care. The June 20, 2013 acceptance also advised appellant of her right to file a claim (Form CA-7) for wage-loss compensation, which she did. As noted, OWCP ultimately paid wage-loss compensation through June 19, 2013.

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<sup>2</sup> Appellant used her own leave to cover her absence from November 8, 2012 through February 22, 2013.

On July 10, 2013 appellant's representative filed a request for reconsideration. He argued that appellant had permanent residuals caused by her work duties. Counsel also noted that appellant wished to resume working, but the employing establishment would not make work available due to her permanent work restrictions. He based the request for reconsideration on a July 3, 2013 report from Dr. Marino. Counsel explained that part of appellant's problems were acute and symptomatic, but related to a chronic irreversible long-term problem of a structural bilateral foot abnormality. Dr. Marino cautioned that a return to appellant's previous work level would produce the same symptom complexes that were currently under control. He further explained that in stating appellant's stress fracture and plantar fasciitis had improved and resolved, he was referring to the symptoms related to the underlying deformity that had been aggravated by her work environment.

By decision dated August 12, 2013, OWCP denied modification on the basis that the evidence did not support residuals or disability due to appellant's compensable employment injury.

Appellant returned to work on August 29, 2013. She filed a claim (Form CA-7) for wage-loss compensation for the period June 20 through August 28, 2013.

In a January 17, 2014 decision, OWCP denied appellant's claim for wage-loss compensation.

### **LEGAL PRECEDENT**

Once OWCP accepts a claim and pays compensation, it bears the burden to justify modification or termination of benefits.<sup>3</sup> Having determined that an employee has a disability causally related to her federal employment, it may not terminate compensation without establishing either that the disability has ceased or that it is no longer related to the employment.<sup>4</sup> After termination or modification of compensation benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation shifts to the employee.<sup>5</sup>

The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability.<sup>6</sup> To terminate authorization for medical treatment, OWCP must establish that the employee no longer has residuals of an employment-related condition that require further medical treatment.<sup>7</sup>

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<sup>3</sup> *Curtis Hall*, 45 ECAB 316 (1994).

<sup>4</sup> *Jason C. Armstrong*, 40 ECAB 907 (1989).

<sup>5</sup> *I.J.*, 59 ECAB 408, 415 (2008). To prevail, the employee must establish by the weight of the reliable, probative and substantial evidence that she had an employment-related disability that continued after termination of compensation. *Id.*

<sup>6</sup> *Furman G. Peake*, 41 ECAB 361, 364 (1990); *Thomas Olivarez, Jr.*, 32 ECAB 1019 (1981).

<sup>7</sup> *Calvin S. Mays*, 39 ECAB 993 (1988).

## **ANALYSIS**

OWCP accepted appellant's claim for bilateral calcaneal stress fractures. In a May 8, 2013 report, appellant's podiatrist, Dr. Marino, indicated that her stress fractures had resolved and she did not require further medical treatment. He also indicated that appellant had an underlying structural deformity -- anterior cavus with a functional equinus. Dr. Marino explained that her high arched feet tended to reduce ankle joint dorsiflexion causing stress on the Achilles tendon and plantar fascia. Appellant's underlying structural deformity was not employment related. Dr. Marino further explained that the underlying condition predisposed her to stress fractures and plantar fasciitis. He also indicated that appellant's work, which involved prolonged standing on hard flat surfaces and carrying extra loads certainly contributed to this type of injury. At the time, Dr. Marino clearly indicated that appellant's bilateral calcaneal stress fractures had resolved and she required no further medical treatment. Based on this information, OWCP properly terminated further medical care for the accepted bilateral foot condition. Dr. Marino's subsequent report dated July 3, 2013 does not undermine OWCP's June 20, 2013 termination of medical benefits, nor does it establish a basis for further medical care for the accepted condition. Counsel's claim of permanent employment-related residuals is not supported by any of the medical evidence of record.

With respect to appellant's claim for wage-loss compensation for the period June 20 through August 28, 2013, the Board finds that the record does not establish injury-related disability for the claimed period.<sup>8</sup> As a precautionary measure, Dr. Marino recommended certain work restrictions regarding weight and prolonged standing/walking. He explained that returning to appellant's previous work level would produce the same symptom complexes that were currently under control.

Appellant's accepted employment injury resolved without any reported residuals. Thus, her employment-related injury did not preclude her from resuming her prior duties as a distribution clerk. However, appellant's underlying structural deformity made her susceptible to further injury, and Dr. Marino believed that for long-term success work restrictions would be in her best interest. Despite however reasonable Dr. Marino's limitations may seem, prophylactic work restrictions do not establish a basis for wage-loss compensation. A fear of future injury is not compensable under FECA.<sup>9</sup> Accordingly, OWCP properly denied appellant's claim for wage-loss compensation on or after June 20, 2013.

## **CONCLUSION**

Appellant is not entitled to wage-loss compensation for the period June 20 through August 28, 2013.

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<sup>8</sup> For wage-loss benefits, the claimant must submit medical evidence showing that the condition claimed is disabling. 20 C.F.R. § 10.115(f). The evidence submitted must be reliable, probative and substantial. 20 C.F.R. § 10.115.

<sup>9</sup> *Manuel Gill*, 52 ECAB 282, 286 n.5 (2001).

**ORDER**

**IT IS HEREBY ORDERED THAT** the January 17, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 26, 2014  
Washington, DC

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board